

SPECIAL CIVIL APPLICATION NO. 3064 OF 1996.

Date of decision: 15.7.1996.

For approval and signature

The Honourable Mr. Justice B.C. Patel

The Honourable Mr. Justice R. R. Jain

Mr. S.N. Soparkar, advocate for the petitioners.

Mr. B.J. Shelat, counsel for M/s. M.R. Bhatt & Co.,  
for respondent No.1.

1. Whether Reporters of Local Papers may be allowed  
to see the judgment?-yes
2. To be referred to the Reporter or not?-no
3. Whether their Lordships wish to see the fair copy  
of judgment?-no
4. Whether this case involves a substantial question  
of law as to the interpretation of the  
Constitution of India, 1950 or any order made  
thereunder?-no
5. Whether it is to be circulated to the Civil  
Judge?-no

Coram:B.C.Patel & R.R.Jain,JJ.

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July 15, 1996.

Oral judgment (Per Patel, J.)

By filing this petition under Article 226 of the  
Constitution of India, the petitioners have prayed to  
quash and set aside the impugned order dated 25.3.1994  
passed by the Appropriate Authority compulsorily  
purchasing the property owned by the petitioner No.1

which was agreed to be sold to the petitioner No.2. It is also prayed in the alternative for appropriate writ, order or direction to the effect that the order at Annexure 'A' passed by Appropriate Authority stands abrogated for not paying the offered amount of consideration to the petitioner No.1 as required under the Scheme of Chapter XX C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

The petitioner No.1 is the owner of the property being Final Plot Nos. 60 and 70/16 of Yerwada Town Planning Scheme No.1 out of the land bearing Survey No.212 Hissa No.2, Yerwada, Taluka Haveli, Pune (hereinafter referred to as "PUC"). Petitioner No.2 agreed to purchase the land under agreement dated 27.12.1993. As per the agreement, total consideration was of Rs.1 crore and on execution of the said agreement, petitioner No.2 paid a sum of Rs.15 lacs to petitioner No.1 while balance was to be paid within 7 days on receiving 'no objection certificate' from the Appropriate Authority. It was indicated in the agreement that property is in occupation under leave and licence agreement dated 7.11.1985 in favour of Mrs. A.P. Inamdar as a Licensee. The property was to be transferred on 'as is where is' basis. In view of the agreement, vendor was required to handover vacant and peaceful possession of the land to the purchaser on execution of conveyance in respect of the same. Copy of the agreement is annexed to the petition as Annexure 'B'. Copy of leave and licence agreement dated 7.11.1985 is annexed to the petition at Annexure 'C'. The petitioners filed Form No.37 (I) under the provisions of Section 269-UC on 31.12.1993.

On 5th January 1994 the petitioners were called upon to produce information on or before 16.1.1994. By another correspondence dated 19.1.1994 further information was called for. It appears that on 25.1.1994 the Appropriate Authority issued show cause notice calling upon the petitioners to file objections in respect of the impugned transaction of PUC by 11.3.1994 and to show cause as to why the property should not be purchased under the provisions of Chapter XX C of the Act. On 7.3.1994 the petitioner No.2 lodged objections and pointed out the aspects which will be referred at a later point of time. After taking into consideration the submissions in writing, Appropriate Authority passed the order on 25.3.1994, a copy of which is produced at Annexure 'A' to the petition, whereby the Appropriate Authority declared that it is satisfied that the property under consideration is fit for preemptive purchase under Section 269 UD(1) of the Act and further that the net

consideration payable by the Central Government will be paid as per the provisions of Section 269 UG (1) of the Act on handing over vacant possession of the land and till then the amount of net consideration will be kept deposited with the Appropriate Authority's account. It appears that petitioner No.2 filed a petition being writ petition No.4415 of 1994 before the Bombay High Court challenging the impugned order. As the petitioner No.1 moved this Court by filing the petition, Mr. Shelat, learned counsel for the revenue, objected about two parallel proceedings one filed by the petitioner No.1 before this Court and another filed by petitioner No.2 before the Bombay High Court, who was originally respondent No.2 in this petition. Subsequently, with the permission of this Court respondent No.2 is joined as petitioner No.2 in this petition and petitioner No.2 has agreed that he shall not press the petition before the Bombay High Court. After that this Court thought it fit to hear the matter.

Mr. Soparkar, learned counsel, has raised several contentions. He contended that the show cause notice dated 25.2.1994, Annexure 'F' does not indicate the evidence on which the Appropriate Authority has placed reliance with a view to compare the value of the property under consideration. The notice is very vague. In the order at Annexure 'A' we find that following submissions were raised before Appropriate Authority.

1. The land is in possession of Mrs. Inamdar as per leave and licence agreement dated 7.11.1985 and this itself is a big setback. It may take 10 to 15 years to receive the possession.
2. Almost 40% area will be unbuildable for the compulsory provisions of road and garden by P.M.C. and hence only 60% area is available for development.
3. The 50% of land will be covered under U.L.C. Act and if scheme u/s 20 is sanctioned they have to pay 30% of the market price to the Govt. In addition to that they will be required to reserve 20% of B.U.A. for Govt. and for the remaining flats price restriction will be imposed by the Govt.
4. The subject land is an agricultural tenure and it will be very difficult to convert it for non-agricultural use.

5. Due to the close proximity of river Mula-Mutha, unprecedented mosquito menace persistently exist.
6. The general area in the vicinity is largely undeveloped and there is neither market place in the nearby vicinity nor there is any proper transportation system as the same is in isolated location.
7. It is further submitted vide letter dated 18.3.1994 that almost 5000 sq.mtrs. of land out of Final Plot No.70/16 is reserved for Bird Sanctuary and is, therefore, not buildable. They have applied to the Poona Municipal Corporation for the necessary zonal certificate, which may take 8 to 10 days. However, they have filed the certificate from their Chartered Architect for the same.

Before this Court, Mr. Soparkar has made following submissions, over and above the submissions raised before the Appropriate Authority:

- (1) It is required to be noted that no details are given as to why there is under-valuation of the property.
- (2) No comparable instances are quoted in the notice.
- (3) There is nothing to indicate how the Appropriate Authority arrived at the conclusion that there is difference of 15% between agreed price and market price. He submitted that there is nothing to indicate about the evasion of tax and Appropriate Authority has failed in passing the order as market value of the property under consideration is not at all determined.

As against this, learned counsel for the revenue, submitted that this court should not interfere in a matter like this where the Appropriate Authority has passed an order after considering material on record. It is further submitted that the Appropriate Authority has taken into consideration relevant material for passing the order. Therefore, no interference is called for.

We do not think it proper to consider all the submissions made by learned counsel in the matter as the matter is required to be disposed of only on a short ground. This

Court in the case of Sarwarben Temas Khambata & Ors v. Appropriate Authority, (1995) 129, CTR (Guj) 355, has held that in order to draw inference about undervaluation, it is necessary to determine first the fair market value of the property in question in the light of attending circumstances. Without doing so, it is not only difficult but impossible to say that the apparent consideration is lower than market value by 15% or more. The figure of fair market value cannot be left to conjectures and surmises and to justify the order under Section 269 UD (1) of the Act. Appropriate Authority must come to definite conclusion that the undervaluation is by more than 15% of fair market value. In the aforesaid decision this Court held that the order passed by the Appropriate Authority was illegal and without application of mind to the relevant facts. In the instant case, looking to the order, how the fair market value is arrived at by the Appropriate Authority is not at all indicated. As discussed above, the market value of the property is not at all indicated. First the Appropriate Authority will have to arrive at a conclusion as to what is the market value of the property and only thereafter it will be possible to say that the value agreed for sale is more or less. Only after coming to conclusion about the market value of the property, one will be in a position to come to conclusion that the price indicated in the agreement is less or more. Once the Appropriate Authority has failed in exercising the duty of finding out the market value of the property, it cannot find out whether the value indicated in the document is less by 15% of the market price. Admittedly, reading the order, except discussing the probable price of the property, market value is nowhere considered. Therefore, on this short ground, the impugned order is required to be quashed.

Mr. Soparkar, learned counsel, submitted that in view of the decision of the Apex Court in the case of C.B. Gautam v. Union of India, 199 ITR 530, the impugned order is required to be quashed. In the judgment, the Apex Court has observed as under:

"Thus, it is pointed out by the Board that the right of pre-emptive purchase has to be exercised only if the fair market value is found to be at least 15 per cent more than the apparent consideration."

The Court further held that provisions of Chapter XX C can be resorted to only when there is clear undervaluation of the property to the extent of 15% or

more. In view of this decision, it is clear that the powers can be exercised by the Appropriate Authority after satisfying that the apparent consideration is lower than the fair market value by 15% or more. This is the paramount aspect to be taken into consideration and when the fair market value of the property is not arrived at, the Appropriate Authority cannot be pass any order to the effect that the apparent consideration is less by 15% or more. Therefore, the petition is required to be allowed.

We have not discussed other submissions made by Mr. Soparkar as on the short point that the Appropriate Authority has not arrived at the fair market value of the 'PUC' the petition is disposed of.

In the result, the petition is allowed. The order passed by the Appropriate Authority, at Annexure 'A' is hereby quashed and set aside with direction to the Appropriate Authority to issue 'no objection certificate' within a period of eight weeks from today. Rule is made absolute to the aforesaid extent with no order as to costs.